IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 228 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JADEJA PRAVINSINH ANADUBHA

Versus

JHALA BHIKHUBHAI RAMSANGJI

Appearance:

MR BD KARIA for Petitioner

MR HM PRACHCHHAK for Respondent

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/06/2001

ORAL JUDGEMENT

1. Rule. Mr.H. M. Prachchhak, learned advocate waives service of rule for respondent.

2. The petitioner has challenged the order dated 30/12/2000 passed by Joint Civil Judge (J.D.),Dhragadhra, District Surendranager below Ex.66 in the proceedings of

Regular Civil Suit No.90 of 1997.

That by the impugned order, the trial Court has directed the present petitioner/plaintiff to produce the documents listed in para-(6) of the application Ex.66.

3. On behalf of the petitioner, it is contended that the trial Court has failed to consider the objection filed by the plaintiff against the application Ex.66 for production of the documents. It is submitted that the documents listed in para-(6) at Sr.Nos.(a) to (e) are the documents in the nature of public documents maintained under the provisions of the Bombay Land Revenue Code and certified copies are available to the parties. The petitioner as plaintiff in reply to the said application has contended that the document listed at Item No.(f) is already produced on record and has further stated that the petitioner/plaintiff is not in possession of the document listed at Item No.(h) of para-(6) of the application at Ex.66.

4. The provisions of Order-11, Rule-14 govern the discovery and production of documents which are in the power and custody of the parties to the proceedings on demand by other side. That the principle under the provisions appears to be that if any party desired to rely on the facts contained in the documents, which is not in his custody but is under the power and custody of rival party, such party can serve notice and move the court for production of the said document. In view of the same, it is difficult to accept the submission urged on behalf of the respondent that facts emerging from the said documents being relavant to defence raised by the respondent/defendant, the petitioner/plaintiff should produce the same on record. That the documents listed at Item No.(a) to (e) being in the nature of public documents, the certified copies of which are available. If the defendant/respondent desire to use such documents to establish the defence raised, the defendant/respondent could obtain the certified copies and could produce on the record.

5. Perusal of the impugned order suggests that the trial Court has misconstrued the provisions for the production of documents under Order-11, Rule-14 of the C.P.C. and without application of mind has observed in para-(3) of the impugned order that the documents called for by the defendants are necessary documents for final disposal of the suit as well as Ex.5. Such order is passed in illegal exercise of jurisdiction conferred vide Order-11, Rule-14 and, therefore, it is necessary to

interfere with the same and as such the following operative order is passed.

The impugned order dated 30/12/2000 passed by the Joint Civil Judge (J.D.), District : Surendranagar below Ex.66 in the proceedings of Regular Civil Suit No.90 of 1997 is modified to the extent that the plaintiff shall produce the documents listed at Item No.(h) and (i) and/or shall file an affidavit, if the said documents are not in his power, possession or custody. The rest of the order, as passed by the trial Court, stands quashed and set aside. Rule to that extent made absolute. Direct service is permitted.

(A.K.Trivedi,J.)

(vrpanchal)*